THE HON'BLE SRI JUSTICE D. APPA RAO

W.A. No. 367 of 2006

and

W.P. No. 22021 of 2001

Dated: 28.4.2006

W.A. No. 367 of 2006

Between:-

P. Ankaiah s/o Kuppaiah, aged 33 years, working in Bank of India, Puttur Branch, Puttur, Chittoor District.

…Appellant

and

B. Nanda Gopal s/o B. Gopi, aged 25 years, working in Bank of India as Casual Labourer Extension Counter, Tirupati,a Chittoor District and 3 others.

…Respondents

W.P. No. 22021 of 2001

Between:-

P. Ankaiah s/o Kuppaiah, aged 28 years, working in Banks of India, Puttur branch, Puttur, Chittoor District.

…Petitioner

And

Bank of India, Zonal office, Hyderabad, represented by its Zonal Manager and two others.

…Respondents

THE HONOURABLE SRI JUSTICE D. APPA RAO

W.A. NO. 367 of 2006

and

W.P. No. 22021 of 2001

COMMON ORDER (per Hon'ble Sri Justice D. Appa Rao)

The dispute pertains to the appointment of Safai Karmachari-cum-sepoy in the Bank of India.

2. Sri Ankaiah filed W.P. No. 22021 of 2001 seeking a writ of Mandamus declaring the action of the Bank in not considering his appointment in the existing vacancy of Safai Karmachari-cum-Sepoy in the 3rd respondent-bank as arbitrary and illegal and to consider him for appointment on preferential basis.

3. He being not a party to W.P. No. 4149 of 2005 filed by Sri Nanda Gopal, with the leave of the Court, preferred Writ Appeal No. 367 of 2006 against the order (in W.P.

No. 4149 of 2005, dated 17.3.2006) wherein the Bank was directed to declare the results in respect of interview held for the above said post of Safai Karmachari-cum-sepoy.

4. Since both the matters relate to the appointment for the very same post and common question is involved, both are taken up for disposal, by a common order.

5. Few facts, necessary for disposal are that the respondents-bank called for interviews to the post of Safari Karmachari-cum-sepoy through Employment Exchange, Chittoor. Sri B. Nandagopal and Sri Ankaiah filed writ petitions challenging the action of the Banks for not calling them for the interview. While Sri Nandagopal alleged that he had worked as casual employee for about 3240 days, Sri Ankaiah claimed that he worked for a period of 2515 days, and that they had preferential rights. They were disposed of at the stage of admission with a direction to the Bank to consider them for the posts, provided they have requisite qualifications and eligibility criteria. The writ petition filed by Sri Nandagopal and Sri Ankaiah were ordered on 10.08.2001 and 29.08.2001 respectively. On 6.10.2001 the interview was conducted. While the District Employment Officer, Tirupati has sponsored the names of 20 candidates, the above two writ petitioners were also called for interview by virtue of the orders in the writ petitions. The interview committee comprising of different Branch Managers and one of the interview member is representative of Scheduled Casts. They conducted interview. The interview committee awarded 22 marks and 16 marks out of 25 marks to Sri B.Nandagopal and Sri Ankaiah respectively.

6. On 17.10.2001 Sri Ankaiah filed W.P. No. 22021 of 2001 for a writ of Mandamus alleging that he appeared for the interview, however, it was an empty formality he was not asked any question except verifying the certificates. He was entitled for absorption/appointment for the post on preferential basis taking into consideration of his service. However, on 15.10.2001 he came to know that Sri Nandagopal, who was working as sub-staff on daily wages basis, was appointed for extraneous consideration. In fact, Sri Nandagopal could not have been appointed as he was having higher qualification than the prescribed qualification. While he was an SSC failed candidate, Sri Nandagopal has passed SSC examination. Therefore, he filed the writ of Mandamus for declaring the action of the Bank in not considering him for the appointment in the existing vacancy as arbitrary and illegal and consequently direct the Bank to consider him for appointment in the existing vacancy. It may be

mentioned herein that by virtue of the interim direction, he was continuing in the said post.

7. Sri Ankaiah filed W.P. No. 7542 of 2004, which he now disputes, for a writ of mandamus directing the action of the respondents in not publishing/declaring the interview results held on 6.10.2001 is void and illegal and consequently direct him to absorb to the post. He questioned his Advocate by a notice as to how he filed such a writ without his instructions and on that the writ petition was not pressed and the same was dismissed on 25.06.2004

8. After waiting for about five years, when the bank was not declaring the results in respect of the interview held on 06.10.2001, Sri Nandagopal filed W.P. No. 4149 of 2005 a similar writ in the lines of W.P. No. 7542 of 2004 for a writ of Mandamus for declaring the action of the Bank in not publishing or declaring the interview results as bad and illegal and consequently directing the Bank to absorb him as sub-staff in the existing vacancy.

9. Since the Bank did not choose to file any counter, and the learned Standing Counsel submitted that he has no objection for allowing the writ, the same was allowed by order dated 16.3.2006.

10. Aggrieved by the said order, Sri Ankaiah, a third party, filed W.A. No.367 of 2006 alleging that the Bank and Nandagopal played fraud on the Court. Without informing the pendency of his writ, no orders could be passed in the said writ. Sri Ankaiah as well as the Bank made to believe that there was no contravention for the selection of the post. In fact, his W.P. No. 22021 of 2001 was pending for his appointment on preferential basis. If the order of the learned Judge is allowed to become final, his writ petition would be infructuous. The selection of Sri Nandagopal was illegal as he had higher qualification than the qualification prescribed. He belongs to Scheduled Caste and failed S.S.C. fully qualified to hold the post. Therefore, he prayed that the W.P. No. 22021 of 2001 be allowed by setting aside the W.P. No. 4149 of 2005

11. The Bank has filed its counter denying the averments made in the writ petition filed by Sri Ankaiah. It was submitted that both the writ petitioners' were interviewed following the directions of the Court. Since Sri Nandagopal had secured highest marks, he was selected. The interview committee comprising of different branch managers and in fact one of the interview committee member belongs to scheduled

caste. Both the petitioners have minimum educational qualifications. Both of them worked on daily wages. The rules do not provide for any preference to the candidates, who worked on daily wages and no weightage is permissible in that regard. The selection of Sri B. Nandagopal was rightly made and no extraneous consideration prevailed in the said selection. However, in view of the pendency of W.P. No.22021 of 2001, the results were not declared. Later as per the direction in W.P. No. 4149 of 2005, the results were declared. The selection being based on merit cannot be termed as arbitrary or illegal.

12. The learned counsel for Sri Ankaiah, the writ appellant as well as writ petitioner in W.P. No. 22021 of 2001, contended that in order to deny his client, who had preferential claim, called the candidates sponsored by the Employment Exchange. Sri Nandagopal is now aged 25 years. He gave false information that he was 35 years, as on the date of selection held on 6.10.2001, though he was only 20 years at that point of time. Moreover, he could not have been appointed, as minimum prescribed educational qualification is SSC failed. Sri Nandagopal has passed SSC by the date of interview, and was unqualified to hold the post.

13. The Bank as well as Sri Nandagopal did not choose to file counters in the writ appeal, except asserting that the interview was conducted after considering the procedure contemplated. It did not commit whether Sri Nandagopal in fact had requisite qualification for the posts in the light of the objections raised by Sri Ankaiah.

14. The learned Advocate for writ appellant contended that if Sri Nandagopal is found to be ineligible, his client must be held selected as he got next highest marks.

14. We may state that the eligibility or ineligibility of the candidates cannot be gone into in this writ petition. Since W.P. No.22021 of 2001 was pending by the date of disposal of W.P. No. 4149 of 2005, this difficulty has come up. The question of eligibility or ineligibility of a candidate could only be determined by the Bank. Since the Bank did not either admit or deny the question of ineligibility of Sri Nandagopal, necessarily it has to consider and resolve the issue, more so, when both of them are working in the Bank in one capacity or the other. We may also mention here that W.P. No. 4149 of 2005 was only for declaration of results, for which the Bank could not have objected. On that, the learned Judge has ordered for declaration of results. However, in the light of W.P. No. 22021 of 2001, necessarily his objections have to

be considered by the Bank. No direction could be given that that appellant has preferential rights, since no rule to that effect was brought to our attention. We do not find any ground to interfere with the order passed by the learned Single Judge in W.P. No. 4149 of 2005. Moreover, by virtue of the orders, the results were already declared. In fact, the said writ appeal has become infructuous. Consequently, the W.A. No. 367 of 2006 was dismissed.

15. However, in the light of the plea taken by Sri Ankaiah in W.P. No. 22021 of 2001, the respondent-bank has to consider and pass appropriate order. In the light of the facts, the writ petitioner is directed to make a representation to the Bank within a fortnight and on such receipt, the Bank is directed to dispose of the same within a month after hearing both the writ petitioners and pass appropriate orders. With these directions, W.P. No. 22021 of 2001 is disposed of.

14. In the result, W.A. No. 367 of 2006 is dismissed and W.P. No. 22021 of 2001 is disposed of as per the directions mentioned above. No order as to costs.

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B. PRAKASH RAO,J

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D. APPA RAO, J

Dated: 28-04.2006

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